

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

TOM GALBRAITH,

Appellant,

v.

DEPARTMENT OF FINANCIAL
INSTITUTIONS,

Respondent.

)
) Case No. DEMO-98-0018

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on December 14, 1999. WALTER T. HUBBARD, Chair, reviewed the record, including the file, exhibits, and the entire taped proceedings, and participated in the decision in this matter. NATHAN S. FORD JR., Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Tom Galbraith was present and was represented by Anita L. Hunter, Attorney at Law, of Parr and Younglove, P.L.L.C. Respondent Department of Financial Institutions was represented by Ann F. MacMurray, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a demotion. Respondent alleged that Appellant was absent from work without authorization on June 2 and 3, 1998.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995).

II. FINDINGS OF FACT

2.1 Appellant Tom Galbraith is a Financial Examiner and a permanent employee of Respondent Department of Financial Institutions. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 6, 1998.

2.2 At the time of the incident giving rise to this appeal, Appellant was Financial Examiner Supervisor for the Division of Banks. Appellant has a history of corrective actions including warnings, counseling and reprimands. In addition, Appellant received a one-week suspension for alcohol-related misconduct.

Appellant was responsible for supervising two senior examiners. In addition, Appellant's duties required him to participate as a team member conducting bank examinations. When conducting bank examinations, team members work on-site at the various banks. When working on-site, team members utilize e-mail, telephones and voice mail to communicate with their offices.

2.3 Appellant was a member of the team of examiners conducting an examination of the Towne Bank in Woodinville, Washington, between May 18, 1998 and June 26, 1998. Appellant was assigned to work on the examination team from Monday, May 25 through Thursday, June 4.

1 2.4 On May 18, 1998, Appellant was notified that a June 5, 1998 pre-disciplinary meeting had
2 been scheduled regarding his behavior during an incident unrelated to this appeal. By e-mail dated
3 May 18, Appellant indicated to his supervisor, Brad Williamson, that he would need some time to
4 prepare for the June 5 meeting. Mr. Williamson, responded to Appellant by e-mail at 11:31 a.m. on
5 May 26 and informed Appellant that he would be allowed to take two workdays off to prepare for
6 the meeting.

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8 2.5 Appellant had previously been granted the use of approved annual leave for May 26, 1998.
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10 2.6 Appellant and Mr. Williamson presented conflicting testimony on the following facts. After
11 carefully weighing the testimony and the corroborating evidence, we find Mr. Williamson's
12 testimony to be credible.
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14 2.7 Subsequent to Mr. Williamson's May 26 e-mail, Appellant and Mr. Williamson discussed
15 whether Appellant should take leave on May 27 and June 2 in order to prepare for the June 5
16 meeting. Appellant indicated that if he took May 27 off, he would not need any additional days to
17 prepare for the June 5 meeting. With this understanding, Mr. Williamson approved Appellant's
18 request for leave for May 27.
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20 2.8 Mr. Williamson was scheduled to be out of town from June 1 through June 4. By e-mail
21 sent at 8:14 a.m. on Friday, May 29, 1998, he informed all the Division of Banks staff that he would
22 be out and that he would be checking his telephone voice mail. He further informed staff that if
23 they needed immediate assistance, they should contact "Nanette or Zach."
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1 2.9 Appellant worked on the Towne Bank examination on May 28 and 29. Appellant should
2 have been able to access his e-mail and to use the telephone on both of those days. Appellant was
3 sick on June 1 and did not report to work. However, during the evening of June 1, Appellant called
4 Mr. Williamson's home and left a message with Mr. Williamson's wife asking Mr. Williamson to
5 call him. Appellant wished to discuss his request to be on leave on June 2 and 3. Subsequent to
6 speaking with Mr. Williamson's wife, at 8:42 p.m. on June 1, Appellant sent an e-mail to Mr.
7 Williamson stating that his e-mail had been down, that he had just received Mr. Williamson's May
8 26 e-mail offering two days off to prepare for the June 5 meeting, and that he planned to accept the
9 offer of two days off. Mr. Williamson's May 26 e-mail had been sent at 11:31 a.m., before he and
10 Appellant had discussed the issue of Appellant's time off and before Appellant had agreed that if he
11 took May 27 off, he would not need any additional days to prepare for the June 5 meeting.

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13 2.10 At 9:48 a.m. on June 2, Appellant sent an e-mail to Mr. Williamson informing him that
14 because he had not heard from Mr. Williamson to the contrary, he was going to take June 2 and 3
15 off to prepare for the June 5 meeting. Appellant did not leave a voice mail for Mr. Williamson and
16 did not contact Nanette or Zach as Mr. Williamson had directed on May 29.

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18 2.11 As a result of Appellant's approved leave on the May 26 and 27, his sick leave on June 1
19 and his decision to take June 2 and 3 off, Appellant worked only three days on the Towne Bank
20 examination. Appellant's absence from the examination team disrupted the examination process
21 and resulted in staff being switched from another job to fill in at the Towne Bank.

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23 2.12 On June 8, Mr. Williamson learned that Appellant had taken June 2 and 3 off without
24 authorization. Mr. Williamson reported the situation to Assistant Director G. R. Zachary (Zach)

1 and recommended that some form of disciplinary action be taken against Appellant. Mr. Zachary
2 informed Appellant of the concerns related to Appellant's actions.

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4 2.13 By letter dated August 21, 1998, Special Assistant to the Director, Scott Jarvis, informed
5 Appellant that the agency was considering taking disciplinary action against Appellant.
6 Specifically, the agency was considering dismissing Appellant from his position. In his letter, Mr.
7 Jarvis presented Appellant with the specific charges and circumstances of Appellant's alleged
8 misconduct and notified Appellant of his opportunity to respond to the allegations.

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10 2.14 Appellant provided written responses to the August 21 charges by letter dated September
11 10, 1998, and memorandum dated September 11, 1998. Although a September 11 meeting had
12 been scheduled for Appellant to provide oral comments to the charges, on September 10 Appellant
13 cancelled the meeting.

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15 2.15 Director John Bley is Appellant's appointing authority. Mr. Bley determined that Appellant
16 neglected his duty and was insubordinate when he took June 2 and 3 off without approval to do so.
17 Mr. Bley believed that Appellant failed to ensure that his request for leave was affirmatively
18 approved and that he attempted to transfer responsibility for his actions to others. Mr. Bley
19 concluded that Appellant's action rose to the level of gross misconduct, had an adverse effect on the
20 Towne Bank examination, was contrary to the agreement Appellant had made with Mr. Williamson,
21 and did not demonstrate the accountability, professional conduct and leadership expected of a
22 supervisory employee. In determining the level of discipline, Mr. Bley considered Appellant's
23 history of prior warnings, counseling, corrective action, and disciplinary action. In addition, Mr.
24 Bley gave consideration to Appellant's willingness to accept responsibility for his conduct in a
25 subsequent incident in which Appellant was tardy to a meeting on July 23, 1998. Because Mr. Bley

1 felt that Appellant's acceptance of responsibility for the July 23, 1998 incident was a positive
2 example of Appellant's ability to "become a responsible, productive, contributing, and non-
3 disruptive member of the division," he concluded that termination was not warranted. Instead, Mr.
4 Bley concluded that demotion to a non-supervisory position was the appropriate level of discipline.

6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent argues that following his discussion with Mr. Williamson on May 26, Appellant
8 knew that he had not been given approval to use two days of leave to prepare for the June 5
9 meeting. Respondent further argues that Appellant knew or should have known when he returned
10 to work on May 28 that he would require more time to prepare for the meeting. But, Respondent
11 asserts that Appellant did not attempt to request to use more leave until June 1, when he knew that
12 Mr. Williamson was out of town. Respondent further argues that Appellant knew he was to contact
13 Mr. Williamson by voice mail or that he was to contact "Nanette or Zach" during Mr. Williamson's
14 absence, yet he failed to do so and instead, chose to utilize e-mail and Mr. Williamson's wife as
15 means of communications. Respondent contends that Appellant contrived this scenario to justify
16 his actions and that coupled with his prior discipline and corrective actions, demotion to a non-
17 supervisory position was justified.

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19 3.2 Appellant asserts that he and Mr. Williamson did not have a verbal agreement that Appellant
20 would not take June 2 and 3 off to prepare for the June 5 meeting. Appellant contends that he relied
21 upon Mr. Williamson's May 26 e-mail offering him two days off and on Mr. Williamson's non-
22 response to his June 1 telephone message as approval for his leave. Therefore, Appellant argues
23 that his use of leave on June 2 and 3 was approved. Appellant asserts that he did not contact
24 "Nanette or Zach" about his need for leave because he felt that the purpose of his leave was private
25 and that it was a matter that he needed to discuss with Mr. Williamson. Appellant further argues

1 that Respondent decided to persecute him, failed to use common sense in this instance, and instead,
2 chose to “make much ado about nothing.” Appellant asserts that Respondent has failed to prove
3 that the disciplinary sanction of demotion was justified.

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IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995).

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.6 Respondent has proven by a preponderance of the credible evidence that Appellant neglected his duty and was insubordinate when he failed to comply with the agreement he and Mr. Williamson had made regarding Appellant's need for leave on June 2 and 3, when he failed to report to work on the Towne Bank examination on June 2 and 3, and when he failed to contact Mr.

Williamson as directed in Mr. Williamson's e-mail. Furthermore, Respondent has proven that Appellant's actions were intentionally deceptive, had an adverse impact on the Towne Bank examination and examination team, and rose to the level of gross misconduct.

4.7 Under the proven facts and circumstances, the disciplinary sanction should be affirmed and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tom Galbraith is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481